

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
SUPPLEMENTAL  
BRIEF**





77-6034  
ORIGINAL  
WITH PROOF  
OF SERVICE

77-6048,

77-6034, 77-6038, 77-6040, 77-6044, 77-6045, 77-6065

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

In the Matter  
of  
WEIS SECURITIES, INC.,

*Debtor.*

GEORGE ALDRICH, et al.,

*Appellants,*

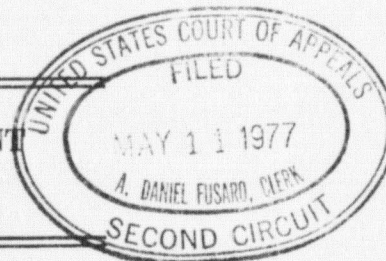
v.

EDWARD S. REDINGTON, Trustee, and  
SECURITIES INVESTOR PROTECTION CORPORATION,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

**SUPPLEMENTAL BRIEF OF APPELLANT  
FIDELITY CORPORATION**



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

In the Matter of WEIS SECURITIES, INC.,:

|                                   |   |                     |
|-----------------------------------|---|---------------------|
| Debtor,                           | : | Docket Nos. 77-6034 |
| GEORGE ALDRICH, et al,            | : | 77-6038             |
|                                   | : | 77-6040             |
| Appellants,                       | : | 77-6044             |
|                                   | : | 77-6045             |
| v.                                | : | 77-6048             |
|                                   | : | 77-6065             |
| EDWARD S. REDINGTON, Trustee, and | : |                     |
| SECURITIES INVESTOR PROTECTION    | : |                     |
| CORPORATION,                      | : |                     |
| Appellees.                        | : |                     |

-----X

APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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SUPPLEMENTAL BRIEF OF APPELLANT FIDELITY CORPORATION

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PRELIMINARY STATEMENT

The opinion and order appealed from were issued by the Honorable Inzer B. Wyatt, District Judge, on appeal from an opinion and order of the Honorable Roy Babitt, Bankruptcy Judge. Judge Wyatt's opinion and order are reported at 425 F. Supp. 212, and Judge Babitt's opinion is reported at [1976-1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,666. This Supplemental Brief is offered by Fidelity Corporation, a claimant-appellant herein.

The appellant Fidelity Corporation incorporates the legal argument set forth in the Joint Brief of appellants and does not independently cite any additional authorities to this court.



### STATEMENT OF THE CASE AND FACTS

Fidelity Corporation (hereinafter "Fidelity") is a Virginia corporation which, through itself and its subsidiaries, conducts various insurance, financial and marketing businesses and services. Fidelity's principal office is located in Richmond, Virginia.

On January 21, 1971 Fidelity entered into an agreement (hereinafter "Insurance Agreement") with Weis, Voisin & Co., Inc., the predecessor of Weis Securities, Inc., the debtor herein (referred to collectively hereinafter as "Weis"). The Insurance Agreement provided that Fidelity would lend Weis one million dollars (\$1,000,000.00). (A 173-191). In consideration for this loan, Weis undertook to sell insurance exclusively for Fidelity and issued a subordinated promissory note in the amount of one million dollars (\$1,000,000.00) to Fidelity.

As alleged in Fidelity's objections to the trustee's position (A 248-'50) both Fidelity and Weis intended the two documents referred to above to be treated as part of one agreement and understanding. Fidelity would not have made the loan to Weis but for Weis' commitment to sell life



insurance for Fidelity exclusively.

Although Weis commenced selling life insurance for Fidelity in April, 1972, Weis ceased such exclusive sales, in violation of the Insurance Agreement, agreeing to sell insurance for others in early October, 1972.

On October 12, 1972 Weis entered into a new agreement with Fidelity wherein Weis agreed to repay the one million dollar (\$1,000,000.00) loan to Fidelity without subordination, on November 2, 1972. Weis, however, failed and refused to make payment.

Approximately one year later, Fidelity filed its claim herein in the amount of one million, two hundred thousand (\$1,200,000.00) dollars, (\$200,000.00 of which represents accrued interest). Fidelity claims that it should be treated as a general unsecured creditor.

As required by order of this court dated April 24, 1974, Fidelity filed timely "Objections" to the Trustee's position that Fidelity's claims were subordinated to those of other general creditors of Weis.

The objections were predicated upon the facts that:  
(1) the purported subordination agreement between Fidelity and Weis is void and should be rescinded on the grounds of material breach, failure of consideration, and fraud and



that, as a necessary result of the grant of such rescission, Fidelity should be accorded the full rights of a general unsecured creditor; and, as an alternative ground (2) that there was a subsequent agreement by Weis to repay the \$1,000,000.00 to Fidelity without subordination to other creditors, which is valid and binding and entitled Fidelity to be accorded the full rights of a general unsecured creditor.

Thereafter, the Trustee filed his Objections to the allowance of Fidelity's claim as asserted. The trustee disputed the factual basis for Fidelity's rescission claim and raised the defenses of waiver and estoppel.

Subsequent to filing these objections and as outlined in the Joint Brief of the Appellants heretofore served herein, the trustee's motion for summary judgment to disallow general creditor status to the claims of the claimants herein was denied by the Hon. Roy Babitt, Bankruptcy Judge for the Southern District of New York. On the trustee's appeal to the United States District Court for the Southern District, that court, per Hon. Inzer B. Wyatt, U.S.D.J., reversed the decision of the Bankruptcy Court. This appeal is from this order of Judge Wyatt.

CONCLUSION

The order of District Court granting the Trustee's Motion for Summary Judgment should be reversed and remanded to the Bankruptcy Court.

Respectfully submitted,

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STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss .

JULIO VALLEJO, JR., being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 703 REMSEN AVE.  
BROOKLYN, NYC.

That on the 9th day of MAY, 1977,  
deponent personally served the within SUPPLEMENTAL BRIEF OF APPELLANT  
FIDELITY CORPORATION

upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

By leaving 2 true copies of same with a duly  
authorized person at their designated office.

~~By depositing 2 true copies of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.~~

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

ALAN C. WINICK, ESQ.  
ATTORNEY FOR CLAIMANTS-APPELLANTS  
All American Life & Casualty Company,  
General United Life Insurance Company and  
Robert E. Slater  
Suite 5226  
500 Fifth Ave.  
New York, N. Y. 10036

Sworn to before me this

9th

day of

MAY

1977

Michael DeSantis

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930903  
Qualified in Queens County  
Commission Expires March 30, 1979

Julio Vallejo Jr.



STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss .

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That on the 9th day of MAY, 1977,  
deponent personally served the within SUPPLEMENTAL BRIEF OF APPELLANT  
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COUNTY OF NEW YORK) ss .

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or official depository under the exclusive care and custody  
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*Julio Vallejo Jr*

Sworn to before me this

9th day of MAY, 1977.

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